IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 1068 of 2002

Virkar Engineers, Developers
Proprietor,
Shri Vikas N. Virkar .. Petitioner

versus

Nav Vasant Vihar Co-op.Housing
Society Ltd. & ors. .. Respondents

...

Mr.R.S. Apte for the petitioner.

Mr.Sandesh Deshpande for the respondent no.1.

CORAM : B.H. MARLAPALLE,J

DATED : 24th August 2005.

P.C.:

1. Heard Mr.Apte, learned counsel for the petitioner - defendant no.1 and Mr.Sandesh Deshpande for the respondent no.1 - original plaintiff in RCS 616 of 2000. The defendant no.1 who is the builder filed an application at Exhibit-25 and stated that the suit valued u/s.6(iv)(j) of the Bombay Court Fees Act 1959 could not be entertained and the said valuation was wrong. The trial Court therefore

framed the issue "whether the suit of the plaintiff was governed by section 6 (iv)(j) of the Bombay Court Fees Act and by the impugned order dated 24th April 2001, the said issue has been answered in favour of the plaintiff.

2. The defendant no.1 builder constructed a building known as "Nav Vasant Vihar Bhavan" consisting of flats and garages. 16 flats and two garages have already been sold and it has retained one office room to itself. The flat owners formed the society i.e. the plaintiff and no conveyance was executed by the builder. The society therefore filed RCS No.616 of 2000 contending that the stilt and the office premises are the property of the Society and the builder was not entitled to construct in the stilt portion unless he had sought consent of the members. The prayers set out in paragraph no.31(a) to (h) have been duly considered by the trial Court. Mr.Apte, the learned counsel for the petitioner pointed out that the plaintiff Society also sought compensation of the office premises. In fact, this prayer is consequential to the declaration sought and therefore, the conclusion arrived at by the trial Court that the suit is governed by Section 6(iv)(j) of the Bombay Court Fees Act cannot be held to be

grossly erroneous calling for interference in the Civil Revision Application.

3. Civil Revision Application is therefore rejected summarily. Interim order if any stands vacated. The trial of the suit is hereby expedited.

B.H. MARLAPALLE, J